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COMMITTEE ON BANKING, COMMERCE AND INSURANCE
February 15, 2005
LB 564, 676, 41, 496

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 15, 2005, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 564, LB 676, LB 41, and LB 496. Senators present: Mick Mines, Chairperson; Pam Redfield, Vice Chairperson; Mike Flood; Jim Jensen; Joel Johnson; Chris Langemeier; LeRoy Louden; and Rich Pahls. Senators absent: None.

SENATOR MINES: Ladies and gentlemen, good afternoon. I'd like to welcome you to the meeting of the Banking, Commerce and Insurance Committee. My name is Mick Mines. I'm the chair of the committee and I would like to first start off by telling you to shut off those darn cell phones. Who's back there today? Oh, we have a gun in the back, keep that in mind (laughter). Let me start by introducing the rest of the committee today. On your left, Senator Rich Pahls from Omaha; Senator Jim Jensen from Omaha; Senator Pam Redfield, Ralston. Starting on the outside, Senator Langemeier, Chris Langemeier from Schuyler, and Senator Mike Flood from Norfolk. Also be aware that this is the time of season that we introduce bills in other committees so if you see senators coming and going, it's no disrespect. It's just we are busy elsewhere as well. We will take up the bills as listed in order today. On your sheets, LB 564 followed by LB 676, LB 41, and LB 496. This is your part of the public process. We encourage you to come forward, offer your comments, suggestions, help us facilitate this process, keep your comments concise and to the point and listen to the testifiers ahead of you so that we don't have repetition. We need you to fill out one of the forms, a testifier form and they are located on the desk in front of me or over by the door. Our process is, the senator will introduce the bill followed by input from testifiers beginning with those in support followed by those in opposition and then those testifying in a neutral capacity. Also, very important, help us out. When you come to the desk please state your name and spell your first and last name for the record. So that is all that you need to know and let's begin by opening the public hearing. Before I do that, I'd like to note that Senator LeRoy Louden from Ellsworth has joined the committee. Let's open the public hearing on LB 564. Senator Janssen. You're our favorite introducer. Did I

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 2

LB 564

ever tell you that?

LB 564

SENATOR JANSSEN: No.

SENATOR MINES: You're our favorite introducer.

SENATOR JANSSEN: Oh, what do you want? (Laughter)

SENATOR MINES: Just to welcome you.

SENATOR JANSSEN: Okay. Good afternoon, Senator Mines, members of the committee. For the record, my name is Ray Janssen and representing the 15th Legislative District, the "Pathfinder District." This bill affects how federal excise tax on motor fuel is collected. Currently, the independent petroleum marketers and retailers collect the tax from the consumer and then remit the tax to the suppliers. The supplier then remits the tax to the IRS. For sales from the first of the month to the 15th, the tax is due on the 29th. For sales between the 16th to the end of the month, the tax is due on the 14th of the following month. The supplier enjoys a so-called what we like to call a float, in some cases for a full four weeks. This bill would give the option to the retailer to pay the federal excise tax due to the supplier one day before the tax is due to the IRS. This bill simply would give the retailer the option that the supplier enjoys calling the float. So that's about the extent of the bill, changes those dates around a little bit and I'm sure someone will be before you this afternoon to give you some more details on the idea and why they want this to happen. With that, I'd answer any questions that I could.

SENATOR MINES: Thank you, Senator. Members, do you have questions? Senator Jensen.

SENATOR JENSEN: Well, Senator Janssen, you realize by bringing a one-page bill that everybody is going to read it (laugh) and...

SENATOR JANSSEN: I hope you do, thoroughly.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 3

LB 564

SENATOR JENSEN: Okay (laughter). Thank you.

SENATOR JANSSEN: I might waive closing. I'll be right next door if there is something that you need to know.

SENATOR MINES: Thank you. Any other questions, committee? Thanks for your testimony. Appreciate it. I will now ask for a show of hands. Those in support of the bill, please raise your hand. Those testifying in support. I see one. Those testifying in opposition to the bill, please raise your hand. I see 45, just kidding (laughter). And those wishing to testify in a neutral capacity. I see none. Mark, the floor is yours. Welcome.

MARK LIPPINCOTT: Good afternoon, Senator Mines and members of the committee, my name is Mark Lippincott. Lippincott, L-i-p-p-i-n-c-o-t-t. I appear before you today in support of LB 564 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. As a member of the board of directors, we wish to publicly thank Senator Ray Janssen for introducing this bill on our behalf. NPCA represents over 250 independent petroleum marketers and convenience store operators throughout the state of Nebraska, operating over 1,200 retail fueling facilities. Prior to the change in federal tax law back in the late 1990s that moved the point of collection of the federal excise tax on motor fuel to the terminal rack, independent petroleum distributors used to remit the federal tax directly to the IRS once a month on the 20th of the month following the month in which the federal tax was collected. Currently, our suppliers like Conoco, Phillips, BP, Sinclair and the like collect the federal tax which is currently 18.4 on gasoline and 24.4 on highway diesel from the distributor at the same time that they collect for the fuel itself which is typically ten days from the date of purchase. The supplier, in turn, does not have to remit that tax until the 29th of the month for sales from the first until the 15th of the month and then on the 14th of the following month for the sales between the 16th and the 31st. Since there are no federal laws governing contracts and our contracts with the various suppliers cross state jurisdictions, state laws dealing with contracts provide the framework for businesses to work from. Basically, LB 564 would provide a mechanism in Nebraska state contract law that would allow, not mandate, two parties doing business in Nebraska. The framework to allow

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 4

LB 564

Nebraska distributors to remit by electronic funds transfer the federal excise tax to their suppliers the day before the supplier remits such taxes to the IRS. The framework puts all Nebraska distributors on a level playing field with their supplier regardless of size. We as an organization or group of distributors cannot collectively discuss this type of request outside this arena without violating federal laws that prohibit competitors from discussing terms of a contract collectively. The states of North Carolina, Georgia, Tennessee, and Kentucky have passed this legislation over the past few years with no opposition, and the states of Texas and Oklahoma are introducing similar legislation in 2005 as well. The provisions of this bill are modeled after those of the above-mentioned states. This bill would keep funds in Nebraska business bank accounts and thus Nebraska banks. Taking into account there were over 881 million gallons of taxable gasoline and over 368 million gallons of taxable diesel fuel sold in Nebraska in 2004, this equivocates to over \$10 million that would potentially stay in Nebraska banks for roughly 15 days. Once the process starts, it is a constant since gasoline is continually being purchased and sold at about the same rate each month. A small percentage of this tax money, less than 5 percent, would go to other states where distributors doing business in Nebraska are domiciled (sic: domicile). This amount could double to over \$20 million if the current version of the federal highway bill passes as it contains a provision that would require suppliers to remit the federal excise tax on fuel only once for a month on the 9th of the month following the collection of the tax. LB 564 would take effect immediately on unbranded fuel contracts as these contracts do not contain an election of law provision. Branded contracts, on the other hand, will require passage of this legislation in states in which the major oil companies are domiciled (sic: domicile). Take Texas for an example which is where Conoco Phillips is based, this procedure could not be implemented to due the fact that branded contracts contain a selection of law election. The election of law provision asks that the distributor choose which state contract law will apply in settling any disputes of the contract. This will conclude my testimony and I would be happy to try and answer any questions that you may have.

SENATOR MINES: Mark, thank you, good testimony. By the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 5

LB 564

way, I might mention members, Mark is from Blair, long time friend. Nice to have you here. Operates a chain of convenience stores. How many?

MARK LIPPINCOTT: We have five.

SENATOR MINES: Five convenience stores. And I'd also need to recognize that Senator Joel Johnson from Kearney has joined us. Are there questions for Mr. Lippincott? Senator Redfield.

SENATOR REDFIELD: I do have one. Can you tell me when you take possession of the gasoline, is that when you're currently having to remit or you're delaying that into the time frame you referred to?

MARK LIPPINCOTT: We owe the tax now. Ten days is the basic terms that we pay our suppliers so that...

SENATOR REDFIELD: Okay. So you're paying them for the price of the fuel as well as the tax...

MARK LIPPINCOTT: Right.

SENATOR REDFIELD: ...all at one time within ten days.

MARK LIPPINCOTT: Right.

SENATOR REDFIELD: And you want to pay the price of the fuel and then in a second payment pay the tax?

MARK LIPPINCOTT: That's correct.

SENATOR REDFIELD: All right. I just want to make sure I understood. Thank you.

MARK LIPPINCOTT: Okay.

SENATOR MINES: Thank you. Any other questions for Mr. Lippincott? Senator Louden.

SENATOR LOUDEN: Yeah, thank you, Senator Mines. If I understand this correctly then, you want to be able to pay your taxes that's due on this fuel you bought one day before it's due for your supplier? Is that right?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 6

LB 564

MARK LIPPINCOTT: Yes.

SENATOR LOUDEN: How are you going to pay that? Cash or what?

MARK LIPPINCOTT: That would be on an EFT the same way that they draft our bank accounts now.

SENATOR LOUDEN: Okay. In other words, it's electronically taken out now?

MARK LIPPINCOTT: Yes. Yeah.

SENATOR LOUDEN: Okay. Then do they have the authority then to go ahead and pick that up one day ahead of time whether you're there or not or give the authority or whatever?

MARK LIPPINCOTT: Um-hum.

SENATOR LOUDEN: It's automatically paid? What happens if the money isn't there?

MARK LIPPINCOTT: Well, obviously, if you're going to enter into an agreement like that, we are financially, you know, approved to do that.

SENATOR LOUDEN: I mean, you have like your lending agent or your banker or somebody will cover that check in case something comes up and the money isn't there? Because, I mean, you don't have any time frame to make any contact with anybody to rectify anything because taxes is due.

MARK LIPPINCOTT: Right.

SENATOR LOUDEN: And somebody will have to pay the penalty if the tax isn't paid, right?

MARK LIPPINCOTT: Right.

SENATOR LOUDEN: My question is, is one day enough? Should be more days than that. Should you be ten days before it's due or something like that?

MARK LIPPINCOTT: Well, I guess it's the same as our

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 7

LB 564

supplier now. I mean, what guarantees do they have that the money's going to be there, you know, to the IRS?

SENATOR LOUDEN: Okay, on your taxes.

MARK LIPPINCOTT: Right.

SENATOR LOUDEN: Other than the fact they have a few days to find out whether or not they're going to get reimbursed for that tax money. Do they have to pay that tax money whether you pay it or not?

MARK LIPPINCOTT: Yes.

SENATOR LOUDEN: Okay, thank you.

SENATOR MINES: So, let me go a little further, Mark. So you have a contract with like, what brand do you carry?

MARK LIPPINCOTT: My main brand is Conoco-Phillips.

SENATOR MINES: Conoco. So you have a contract with Conoco-Phillips and in that contract it would state that they're going to electronically remove all those funds a day before they're due. Right?

MARK LIPPINCOTT: Right.

SENATOR MINES: And if you don't meet that by contract, I assume there's some penalties that you're going to pay. I mean, you're obligating that you're going to pay that. So do you see that as a concern? I think it's a good question by Senator Louden.

MARK LIPPINCOTT: A concern to me?

SENATOR MINES: To the industry.

MARK LIPPINCOTT: Well, I don't see it as a concern because it's, you know, we used to submit the tax to the IRS prior to the federal law changing. So.

SENATOR MINES: Okay. So it's not an issue as far as you're concerned?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 8

LB 564, 676

MARK LIPPINCOTT: No.

SENATOR MINES: Great. Thank you. Any other questions?
Senator Langemeier.

SENATOR LANGEMEIER: Thank you, Mr. Lippincott. You just brought up a thought in my mind as you said you used to pay it until the federal law changed.

MARK LIPPINCOTT: Right.

SENATOR LANGEMEIER: Was there a reason it changed, the suppliers were paying it? Were they not getting it collected from...why did it change?

MARK LIPPINCOTT: I don't know the particulars but, you know, they just moved the point of collection, you know to the rack. And at that time, the suppliers charged us and didn't give us the option, you know. That was a government law, federal law.

SENATOR LANGEMEIER: Thank you.

SENATOR MINES: All right. Thank you. Any other questions?
Seeing none, thanks for your testimony. Nice job.

MARK LIPPINCOTT: Okay.

SENATOR MINES: Anyone else wishing to testify in support of the bill? Anyone wishing to testify in opposition? Anyone wishing to testify in a neutral capacity? Seeing none, I'll close the public hearing on LB 564. And Senator Langemeier will introduce LB 676. Nice to have you before the committee, Senator.

LB 676

SENATOR LANGEMEIER: (Exhibit 1) I'm in the hot seat. I'm going to add a copy of my testimony with my...

SENATOR MINES: Great, thank you. Go right ahead.

SENATOR LANGEMEIER: Good afternoon, Chairman Mines and members of the Banking, Commerce and Insurance Committee.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 9

LB 676

My name is Chris, C-h-r-i-s Langemeier, L-a-n-g-e-m-e-i-e-r and here representing District 23. I'm here to introduce LB 676. After the banking collapse in the late seventies and early eighties, a great amount of thought went into the creation of USPAP guidelines which are the Uniform Standards of Professional Appraisers and that's the book I handed around which makes the statutes book...you're well-trained for those books. USPAP has done what it was designed to do. However, there are times when due to time constraints as well as the scope of an appraisal that an appraiser is asked to do, we need to weigh the USPAP requirements. There are currently seven exclusions in state statute which I will not describe, but I have those if you'd like to hear what they are. LB 676 is an addition of an eighth exclusion. Today's citizens have the ability to protest their property tax evaluation before their county commissioners or supervisors. The county commissioners and supervisors, on many occasions, have hired an appraiser to sit with them as an advisor. Due to the time frame in which these boards operate, USPAP becomes difficult to comply with, the rules in USPAP. So due to the limited scope of the work that they're asked to do in an advisory position, we have introduced LB 676 which would exclude them from following the USPAP characteristics. Now I'd leave it open for questions. And there will be others to testify behind me in more detail.

SENATOR MINES: Great. Thank you. Senators, do you have questions for Senator Langemeier? Seeing none, oh, I'm sorry, Senator Johnson.

SENATOR JOHNSON: What do you want us to do with this book?
(Laughter)

SENATOR LANGE MEIER: I will pick them up when you're done.

SENATOR JOHNSON: Oh, all right.

SENATOR LANGE MEIER: If you look at the price tag, they're thirty bucks apiece on the back so I will retrieve them from you.

SENATOR JOHNSON: Thank you (laughter)

SENATOR MINES: Thank you. I've been told that if we submit these into the record, we have to make photocopies of them.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 10

LB 676

SENATOR LANGEMEIER: I hope you do not submit them into record. I'm...

SENATOR MINES: We are not. You will get them back. Thank you.

SENATOR LANGEMEIER: USPAP was designed to put some more uniformity into the appraisal process. This book discusses the guidelines in which research is to be done and reports are to be submitted. Sitting as an appraiser on a county board as an advisor to the board to help them go through the appeal process to do the research and the report writing just isn't necessary. And so that's why we're asking them to be excluded.

SENATOR MINES: Great, thanks. Any further questions? Thank you, Senator. Could I see a show of hands of those wishing to testify in support of the bill? I see two, three, four. Those wishing to testify in opposition? I see none. Those wishing to testify in a neutral capacity, I see none. Welcome. You're number one of four. Number one on the charts. Come on, there you go (laugh).

SHEILA NEWELL: (Exhibit 2) Good afternoon, Mr. Chairman and committee members. I am Sheila Newell, S-h-e-i-l-a Newell, N-e-w-e-l-l. You have the technical reasons for the support of LB 676. I would like to give you an example of reality. I was appointed referee in 2001 to hear protest valuations for Scotts Bluff County Board of Equalization. Prior to listening to the protest valuations and talking to the county board and the county assessor, they estimated approximately 300 protests for that year. When it came down to it, after all the protests were filed, there were 698. The schedule allowed me to listen to a protest valuation every 15 minutes between June 1 and July 25. I considered all the evidence that the taxpayer or their representative had given me and I believe that I made a recommendation to the county board based on the information and the evidence to the best of my ability. I did not, though, perform an appraisal on each valuation protest. Furthermore, the county board of equalization did not intend me to do an appraisal on these protests. LB 676 is basically a clean-up bill. Due to the technical definition in the uniform professional appraisal practice, USPAP, appraisers who are

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 11

LB 676

appointed by county boards are performing appraisal practice technically. This was not the intent of the use of the referee. USPAP was originally developed in 1989 as the initial appraisal standards. These standards have been altered, amended, interpreted, supplemented, or repealed since that time. Consequently, appraisers and users of appraisal services have questions on specific topics regarding USPAP and its application in the variety of situations. Depending on the assignments and the circumstances, an appraisal must comply with specific requirements. Because of this technicality, the Real Estate Appraiser Board voted unanimously at our January meeting to support this bill. Appraisers continue to mature and recognize the principles of change continue to affect the manner in which we perform our appraisal services. We, the Real Estate Appraiser Board, try to keep abreast of these changes and developments. We realize that the appraisal foundation is constantly revising appraisal methods and techniques to meet these new circumstances. For this reason, we are responding to the need of this valuation service for county boards of equalization and our appraisers. Thank you.

SENATOR MINES: Great, nice testimony. Are there questions?
Senator Johnson.

SENATOR JOHNSON: I'm curious. What caused such a tremendous number of protests? Is there a general pattern to...?

SHEILA NEWELL: In Scotts Bluff County, they just estimated it would be 300 and it turned out to be 698. I'm not sure why.

SENATOR JOHNSON: Is that an unusually high number? I guess it's...

SHEILA NEWELL: In Scotts Bluff County? Yes. It was very large. Yeah, it was, and it was very time consuming.

SENATOR MINES: Any other questions? Sheila, I got a question. You were hired by the county board to offer your opinion on the valuation of 600 properties, right? And because there's no appraisal involved, do you personally have exposure? I mean, in your licensing practice, I'm

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 12

LB 676

wondering if you have any liability or culpability in offering an opinion that may not be right. You know what I mean? Because you don't have an opportunity to do an appraisal.

SHEILA NEWELL: What we do, what the referee does is make a recommendation to the county board of equalization.

SENATOR MINES: Which is usually the county board.

SHEILA NEWELL: Right.

SENATOR MINES: Right?

SHEILA NEWELL: They can either A, take the recommendation of the referee, they can take the recommendation of the county assessor,...

SENATOR MINES: Um-hum.

SHEILA NEWELL: ...or based on evidence that they have received, they can make another recommendation.

SENATOR MINES: And the difficulty therein lies, they are not appraisers. I mean, they really don't have any background in appraising. You know what I mean?

SHEILA NEWELL: I do.

SENATOR MINES: Yeah, that's it. Thank you very much. Any other questions? Thank you for your testimony. Nice job. Next testifier, number two of four. Welcome.

DANNY STOEBER: (Exhibit 3) Thank you. Senators, ladies and gentlemen, my name is Danny Stoeber. It's D-a-n-n-y S-t-o-e-b-e-r. I'm the current chair of the Nebraska Real Estate Appraiser Board. The Nebraska Real Estate Appraiser Board is backing this. Our job at the board level, in a nutshell, is licensing, education, and discipline of appraisers. We have good appraisers in the state of Nebraska. As a board, we do not usually know when there is a problem unless we receive a complaint or some kind of communication from somebody raising a question as to whether or not something is being, you know, completed adequately or correctly or not within the law. It's been brought to the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 13

LB 676

board's attention from appraisers in our community that we have a problem right now within the law as how appraisers are trying to complete the work as referees for the counties. In this case, our own appraisers have brought to the board's attention that they believe the current referee system is in noncompliance with our law the way it is currently operating. The way our current system works, appraisers simply cannot act on the number of protests in the time allotted each year and comply with the uniform standards which we call USPAP. We do not believe that the intent of the county boards was ever to have referees do an appraisal, an appraisal review, or an appraisal consulting assignment. The book that Senator Langemeier passed out to you, in it it basically states that when we are under appraisal practice we are completing either an appraisal, an appraisal review, or an appraisal consulting assignment. It also defines what an appraisal is. And in the book on page one it basically states that an appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship. As example, not more than, not less than to a previous value opinion or numerical benchmark, and then it in parenthesis, assessed value, which referees work with, or collateral value. So what referees do is they make recommendations from data that is given to them from the assessor's office, from the property owner or representatives of the property owners at the hearings and they make a recommendation to do nothing, to raise it, or to lower it. So under the strict definition of what we do under appraisal practice which is in our law, that's what referees are asked to do. What we don't believe is that the intent is to develop and report it at the level that is required by the uniform standards. As an example, I do mostly residential work. I do some commercial in any given month's time and I work in rural areas. So this differs, depend on where an appraiser might work. I might be able to put out 20 to 30 residential reports in a month that follow USPAP. As a referee, I might be asked to look at 300 in three weeks and make some sort of recommendation based on my experience as an appraiser in my local market for those boards. This bill's passage does not in any way limit who can be a referee in this state. It will still be up to the county boards who they hire. I believe the statute states that a referee is any suitable person. It will simply ensure that they can continue to hire qualified, registered, licensed residential certified, or certified general

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 14

LB 676

appraisers which are our four categories of licensure in the state to continue to act as referees. This bill is good for both the general public and the county boards as it will allow the most qualified people to provide their services for the least amount of money. And that's really all I have to say at this point. I'll be happy to answer any questions.

SENATOR MINES: Thank you, Mr. Stoeber. Questions? Yes, Senator Pahls.

SENATOR PAHLS: Danny, I have a question here. Am I reading this...would you continue hiring the four categories in the state? Can they hire somebody else?

DANNY STOEBER: Yes.

SENATOR PAHLS: Okay, that's...

DANNY STOEBER: Yes, they can hire, right now they can hire anyone they, you know, deem that would be somebody that would understand value or whatever. It just says any suitable person. It's not limited to appraisers. What has happened is most of the county boards like to hire credentialed appraisers because they know the values best in their market areas.

SENATOR MINES: Great, thank you. Any other questions? Mr. Stoeber, thanks for your testimony.

DANNY STOEBER: Thank you.

SENATOR MINES: Next testifier? Number three of four. Good afternoon.

PERRE NEILAN: Thank you. Mr. Chairman, members of the committee, my name is Perre Neilan, P-e-r-r-e, last name N-e-i-l-a-n. I am an employee of and registered lobbyist for the Nebraska Realtors Association and here simply today on behalf of our more than 4,000 members statewide to offer our support formally for LB 676. That's all that I would have, Mr. Chairman.

SENATOR MINES: Great, thank you. Any questions for Mr. Neilan? Thanks for your testimony. Thanks for being

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 15

LB 676, 41

here. You're the last testifier. Not of the day, just of this.

BETH BAZYN FERRELL: Good afternoon, Chairman Mines, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. We're appearing in support of the bill today. We appreciate the work that appraisers do for counties as referees and we would not want them to jeopardize their credentials in other areas simply because they are serving as referees for the counties. I'd be happy to take any questions.

SENATOR MINES: Thank you. Any questions for Beth? Thanks for your testimony, appreciate you being here. Anyone else wishing to speak in support of the bill? Those wishing to speak in opposition? Anyone wishing to speak in a neutral capacity? Senator, you're welcome to close.

SENATOR LANGEMEIER: When I'm over here you don't ask questions. Thank you. Senator Mines, just to address one of your questions there. The key role to appraisers that are sitting as advisors to the county commissioners is just that, as advisors. As people come in to protest their particular value, they tend to bring in a lot of information. The neighbor's house sold for this or this house sold seven blocks away and what the appraiser is there to do is to quantify that information and tell the board, you know, this really isn't relative material. This house is more relative and it was considered when the assessment was done. And so that's why they're there. They're not there to do an individual report on every house, just to quantify the data that's being testified before them, kind of as legal counsel would do before your committee. Thank you.

SENATOR MINES: Great. Thank you. Any questions for the senator? Seeing none, thank you. We'll close the public hearing on LB 676. And Senator, you want to introduce both of these?

PAM REDFIELD: Yes, please.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 16

LB 41, 496

SENATOR MINES: Senator Redfield will introduce LB 41 and LB 496. We'll hear these bills together unless anyone in the audience would like to testify specifically on one bill or the other. I presume that you're all here for the same reason. Any hands showing you want to testify individually on the bill? Good, Senator Redfield.

SENATOR REDFIELD: Thank you, Chairman Mines, members of the committee. For the record my name is Pam Redfield, R-e-d-f-i-e-l-d. I am the state senator from District 12. I am here to introduce to you LB 41, and I would ask the committee IPP LB 41. That was short and sweet, but the reason for that is because LB 496 has the corrected version of the same concept so Senator Mines, if you'd like to close the hearing on LB 41.

SENATOR MINES: Any comments on LB 41? Seeing none, I'll close that public hearing and open the public hearing on LB 496.

LB 496

SENATOR REDFIELD: (Exhibits 1, 2, 3, 4, and 5) Thank you. I appreciate your helpfulness there. We could have actually asked to withdraw the bill, but it seemed easier just to ask the committee to address it that way. For the record, my name is Pam Redfield. I'm here to introduce to you LB 496. I look for two things when I'm investing savings, earnings and safety. I accept no risk for what I consider the future of my family and I will move funds from bank to bank or credit union according to the best interest rate available. As elected officials we have two primary duties. The first and foremost is the safety of our citizens and their resources, and the second is efficiency in government. In looking around the table I would expect that all of those here would also subscribe to those two very laudable goals. And the bill before you today deals with that concept. We have local government entities, schools, counties, et cetera that are looking for the same thing, maximizing their revenue with interest earnings and looking for safety in the protection of those funds. There are several towns in

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 17

LB 496

Nebraska, however, where the only available institution for cash deposits is a credit union. There is no bank in town. In these towns, school deposits, municipal deposits, and others may sit in a desk drawer overnight or for days until someone can drive to the nearest town and deposit those savings. It's not very secure. It does not earn interest during this time. The staff member, probably the school superintendent or a secretary, can be reimbursed for mileage at the federal rate and the cost of the daily trips can add up, but staff time is lost. That's not efficient government. There are some locations where there is only one bank in town. In this case, deposits from public entities often exceed the maximum protected by the FDIC. Beyond that maximum, securities must be pledged, but this is not the same as pledging the full faith and security of the federal government. LB 496 adds credit unions to the list of institutions that are allowable depositories for public funds. This allows local control to select the best institution for their public government needs. I do not expect a stampede of public funds. In fact, I expect that 99 percent, if not 100 percent of public funds will remain in banks. However, I do believe that local boards ought to have the option. Now some will say that credit unions receive special treatment from the federal government and I do have a handout, actually I have a couple. The first one is a chart and it explains to you the taxing structure between a credit union as compared to a Subchapter S bank. And when those come around, if you could maybe just do the chart first and then you could get the others.

SENATOR MINES: They're not brightly colored like we received yesterday from Senator Landis.

SENATOR REDFIELD: I didn't color. I probably had some students up in the balcony today that would have loved to have done that for us. I apologize. I should have passed those out when I first sat down. On the chart you will see that on the left we have credit unions are 81 in the state of Nebraska. Their average assets are \$26 million. On the right you see Subchapter S banks. There are 79 currently in Nebraska and that number is actually growing because one of the charts he's passing out to you shows how we are really at a very high saturation rate and growing because of the federal tax treatment of Subchapter S's. So almost 30 percent of the banks in Nebraska are Subchapter S's. The

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 18

LB 496

average assets of those institutions is \$81 million. At the federal level, corporate income taxes, neither one pays. Payroll taxes, of course, they both pay. At the state and local level, credit unions pay the state tax which is a financial institution tax based on their deposits times the multiplier you see there. The Subchapter S pays the same exact rate. Property taxes they both pay; sales taxes they both pay unless, of course, the Subchapter S is also one of the companies that have qualified under (LB) 775 in which case they would have some special treatment under our tax laws. So, that's the issue. We as government, I believe, should treat our citizens fairly and equitably. I also think we should guarantee security for the public treasuries, no matter how small. I think we should allow local governments to select the best institution for their needs. And I do have an amendment I would also like to distribute. Senator Louden asked me if I would prepare that language, which I did, which would limit the use of these institutions, eliminating the metropolitan primary class cities. However, I like the bill as it is. The reason I do is the deposit is limited to the amount that is insured so that we guarantee the safety of these funds and it allows the local board to decide whether or not this is in the best interest of their citizens. Are there any questions?

SENATOR MINES: Questions for Senator Redfield? Senator Louden.

SENATOR LOUDEN: Yeah, Senator Redfield. I know I've discussed this with you. Would it make more sense with your bill to delete the word state out of the whole bill and just have it as political subdivisions rather than allowing the state of Nebraska to deposit in these accounts and then just have it statewide for any county?

SENATOR REDFIELD: You're saying that so state deposits would not go in there?

SENATOR LOUDEN: Right.

SENATOR REDFIELD: I don't expect any state deposits would so...

SENATOR LOUDEN: I know but I mean that would just delete them all out of this bill. Right now it said state or

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 19

LB 496

political subdivision accounts. Rather than having certain size counties available, would it be better to...?

SENATOR REDFIELD: So on line 5, if you wanted to eliminate the funds of this state...

SENATOR LOUDEN: Funds, yeah, right.

SENATOR REDFIELD: ...you would be also eliminating them from deposit in other financial institutions.

SENATOR LOUDEN: Yeah, and clear through the bill wherever it says the state would...

SENATOR REDFIELD: I think the bankers would really object to that.

SENATOR LOUDEN: They'd what?

SENATOR REDFIELD: They would really object if we took that language out so that...

SENATOR LOUDEN: Took the state out?

SENATOR REDFIELD: Well, because that's in a part of the bill which addresses the authority to deposit those funds in banking institutions.

SENATOR LOUDEN: Right.

SENATOR REDFIELD: So we couldn't take it out of the general...if you wanted us to limit it within the added language, I don't anticipate the state would ever use this. It would strictly be for small governmental entities.

SENATOR LOUDEN: Well, I just question if it should be...if it could be limited to mostly your local subdivisions is all.

SENATOR REDFIELD: We could talk about that in exec. I mean, I understand and I agree with your concept because in reality I think that's what would happen.

SENATOR LOUDEN: Okay. Thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 20

LB 496

SENATOR MINES: Thank you. Any other questions for the senator? Thank you, Senator Redfield.

SENATOR REDFIELD: Thank you.

SENATOR MINES: (Exhibits 12, 13, 14, and 15) Could I see a show of hands, please, those wishing to testify in support of the bill? I see one, two, three, four. Those in opposition to the bill, please raise your hand. I see two. Three. Anyone else in a neutral capacity wishing to testify? Four and two, please come forward. Brandon, how are you today?

BRANDON LUETKENHAUS: Good. Thank you.

SENATOR MINES: While you're setting up, let me say that we've received from the city of Alliance, the office of the mayor. My goodness, we have all kinds of things. A letter in support of LB 496. We also...I don't have to read the whole thing (laugh). We also received from the Village of Meadow Grove, Meadow Grove clerk in support of LB 496, a letter from the League of Nebraska Municipalities in support of the bill, and a letter from the Village of Hemingford in support of LB 496 and we can distribute those. Thank you. Go ahead.

BRANDON LUETKENHAUS: (Exhibits 6, 7, 8, 9, 10, and 11) Thank you, Mr. Chairman, members of the committee. My name is Brandon Luetkenhaus, B-r-a-n-d-o-n, last name L-u-e-t-k-e-n-h-a-u-s. I appear before you today on behalf of the Nebraska Credit Union League. The league represents 90 percent of Nebraska's 78 credit unions and their 425,000 members. I am here in support of LB 496. This will be simple, straight forward and is wise public policy. It would allow public entities the option of depositing their excess funds in Nebraska credit unions. Currently, credit unions are the only federally insured financial institutions in the state not authorized to accept public deposits. The prohibition against mutually owned financial institutions from accepting public deposits originated in 1912 with the adoption of Article XI, section 1 of the Nebraska State Constitution, which in part provided, "No city, county, town, precinct, municipality, or other subdivision of the state shall ever become a subscriber to the capital stock, or owner of such stock, or any portion or interest therein

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 21

LB 496

of any railroad or private corporation or association." The purpose of the prohibition was to prevent public entities from owning stock in private corporations and/or railroads. The intent of the constitutional provisions was never to provide for-profit financial institutions with a protectionist policy in terms of the placement of public funds by public entities. In 2001, lawmakers addressed the outdated constitutional prohibition in LB 362 by inserting section 77-2365.01 into Nebraska statutes. This section removed the ownership issue for public entities and paved the way for mutually owned financial institutions such as mutual thrifts and credit unions to accept public deposits. In an effort to limit competition, the banking lobby was successful in their attempts to craft a very narrow definition of qualifying mutual financial institutions, thereby excluding credit unions. This piece of legislation before you today, rightfully includes credit unions as a qualified mutual thrift and allows them to participate in the public funds process. From a public policy perspective we believe there are numerous benefits for allowing public entities to deposit funds into not-for-profit, member owned credit unions. First, increased competition for public funds will likely increase the return to the public on those funds. Second, federally insured credit unions would provide a safe and sound additional local option. Third, public entities could save costs associated with making deposits in another community by lowering or eliminating traveling expenses or other expenses associated with making a deposit in another community. Those in opposition to this bill have and continue to argue that public entities should not have the choice of placing their funds in local cooperatives because credit unions do not pay taxes. Those who offer such an argument do so in an attempt to misrepresent the facts. First and foremost, credit unions do pay taxes. The state of Nebraska does not provide any preferential treatment to not-for-profit credit unions. State credit unions pay the same state taxes as any other Nebraska based business including banks. Those taxes include the Nebraska financial institutions tax, real and personal property taxes, sales and use taxes, payroll taxes, and taxes that support state and local economies. Nebraska is one of only six states that impose an income and/or franchise tax on state credit unions; Alabama, Indiana, Iowa, Missouri and Oklahoma being the other five. Coincidentally, Indiana, Iowa and Missouri allow credit

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 22

LB 496

unions to accept public funds. When the tax issue is raised opponents are generally referring to the federal tax status of credit unions. Since LB 496 is a state matter, we believe the federal tax treatment of credit unions has no relevance in relation to this issue. Nevertheless, since the subject will most likely be raised, I would like to take just a moment to address the reasons why credit unions have been given a federal tax exemption. In the aftermath of the collapse of the banking system, Congress found the growing credit union movement to be the perfect alternative to banks, especially in the area of consumer credit. Congress passed the Federal Credit Union Act in 1934, and a bill to explicitly exempt federal credit unions from federal income taxes was passed in 1937. Supporting testimony in the House of Representatives emphasized that credit unions were mutual cooperative organizations operated entirely by and for their members. There was no mention of credit unions' tax exemption being linked to the services they offered. As recently as 1998, in the preamble of HR 1151, the Credit Union Membership Access Act, Congress found that credit unions, unlike many other participants in the financial services market are exempt from taxes because they are member owned, democratically operated, not-for-profit organizations generally managed by volunteer boards of directors, and because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means. When discussing the tax treatment of credit unions what is typically omitted is the tax treatment of banks. In 1996, Congress passed the Small Business Job Protection Act which created a federal tax benefit for banks via the Subchapter S corporate structure. Subchapter S status allows companies including banks and thrifts with less than 100 qualified shareholders to enjoy all the protections and privileges of a corporation while receiving the tax status of partnerships. Partnerships do not pay corporate taxes at the federal and most state levels. While we do not object to the tax breaks received by banks, we do find the banking industries' attempts to limit the growth of credit unions because of their federal tax exempt status as hypocritical. As recently as 2003, this committee supported and the Unicameral passed legislation permitting banks to operate as a limited liability corporation. The benefit of that legislation is that it would allow banks to enjoy tax benefits similar to Subchapter S corporations without being subject to any of

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 23

LB 496

the Subchapter S shareholder restrictions. In 2004, 79 Nebraska banks elected to operate under the Subchapter S structure and as a result have forgone an estimate \$14.5 million in federal taxes. By comparison, in 2004, the forgone federal income tax revenue as a result of the federal tax exemption was estimated at \$4.7 million for Nebraska's 78 credit unions. Banks enjoy many tax breaks and their value is many times larger than the value of the credit union tax exemption. But rather than passing their tax advantages through to consumers, like credit unions do, banking institutions use the advantages to rack up record profits and to enrich a relatively small group of stockholders. The fact that the banking lobby is raising the tax issue only helps to underscore the irony of the contradiction in their arguments. Not only are they seeking a larger advantage by attacking the credit union tax treatment while defending their own subsidies, but also they are constantly seeking to expand their own field of activities while attempting to restrict that of credit unions. Credit unions are more than willing to defend their tax status. However, that debate is better suited in another time and place. Nevertheless, we do feel compelled to point out the duplicity of the banking industry's position. It is our estimation that those who oppose LB 496 do so to protect not only the exclusive market they hold on public funds, but the rate of return which they currently set. The prohibition over the placement of public funds in mutually owned financial institutions was never about taxation nor was it about protecting banks from competition. It was about outdated ownership issues that have already been addressed and rectified by the legislature. The tax issue is being raised merely as an anticompetitive attack against credit unions as a way to limit choice in the financial services marketplace. The state of Nebraska does not play favorites in terms of financial institution taxation and therefore should not play favorites in terms of competition for public funds. The tax status of credit unions and banks has never been a legitimate reason for limiting services. This bill is about better serving the public entities and citizens of this state by adding to the list of eligible depositories for public funds. It does nothing more than broaden the permissible investment options for public entities in the hope of maximizing the public's return on their money. Allowing local government entities the ability to wisely invest the public funds of Nebraska taxpayers

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 24

LB 496

should be a part of state law and not prohibited by it. Governmental entities such as the League of Municipalities, Nebraska Rural Electric Associations and numerous other local public entities support the concept of increased options and maximizing taxpayers' revenues. We are respectfully asking for your support as well. Thank you, Mr. Chairman, and I would welcome any questions the committee would have.

SENATOR MINES: Thank you, Brandon. Questions for Brandon from the committee?

BRANDON LUETKENHAUS: Senator Pahls.

SENATOR MINES: Senator Pahls.

SENATOR PAHLS: I have a question here. Just to clear up a little bit for me since I'm not familiar with some of this. The Subchapter S provisions, there are 79 in the state of Nebraska out of 2,000 over the United States, is that what you're telling me?

BRANDON LUETKENHAUS: Yes.

SENATOR MINES: Any other questions? I'm sorry?

SENATOR PAHLS: I was just trying to make a comparison.

BRANDON LUETKENHAUS: Okay.

SENATOR MINES: Thanks for your testimony. Appreciate it.

BRANDON LUETKENHAUS: Thank you. Um-hum.

SENATOR MINES: Second testifier, please, in support? Good afternoon. Welcome.

KEN BRADSHAW: (Exhibit 16) Good afternoon, Mr. Chairman and members of the committee. My name is Ken Bradshaw. I am president and CEO of Liberty First Credit Union located here in Lincoln.

SENATOR MINES: Ken, could I get you to spell your name, please?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 25

LB 496

KEN BRADSHAW: I'm sorry.

SENATOR MINES: That's all right.

KEN BRADSHAW: Bradshaw, B-r-a-d-s-h-a-w. I am here today to request your support for LB 496. I think that it's important to point out some things that LB 496 does not do. It does not require any public official to deposit funds in a credit union. It merely broadens the law to permit deposits of public funds in credit unions if a public official believes it is appropriate to do so. Credit unions will be subject to much more stringent requirements than banks and thrifts. Credit unions are subject to strong capital requirements which limit their ability to take in massive new deposits. Federal regulations also limit the total amount of public funds a credit union can accept to 20 percent of its total deposits. LB 496 further restricts public funds deposits in a credit union to the amount that is covered by federal deposit insurance, currently \$100,000. Nevertheless, permitting public funds deposits in credit unions will offer public officials greater opportunity to place funds in locally owned and controlled institutions, increasing competition for those funds which in turn should increase the return to the public on those funds. Those who oppose this bill will tell you that credit unions should not be an approved depository because credit unions do not pay taxes. I would like to address that issue. Credit unions pay all of the same taxes as any other businesses except for federal income tax. We are not-for-profit cooperatives, therefore, our members pay income taxes on dividends that are paid to them. No one can acquire wealth tax free by belonging to a credit union. Most of the tax dollars that the local taxing districts receive are from sales and property taxes. The other comment you might hear will be that if this bill passes it will harm small banks. Twenty years ago credit unions nationally had 2 percent of the financial marketplace. Today we still have 2 percent of the financial marketplace. It just does not make sense that these banks will be hurt by credit unions when they are presently competing in many of the mega banks that dominate the marketplace. An interesting note, US Bank and Wells Fargo collectively have 105 offices in Nebraska. It would seem to me that if a bank in Ohio and California can be approved as a depository for Nebraska dollars, surely a credit union in Lincoln, Omaha, or Grand Island should have

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 26

LB 496

the same opportunity. I respectfully ask for your support and I will be happy to answer any questions.

SENATOR MINES: Thank you, Mr. Bradshaw. Questions?
Senator Louden.

SENATOR LOUDEN: Yeah, Mr. Bradshaw, you mentioned in there that credit unions, you know, paying their taxes. Now, since I've been a co-op member of probably more co-ops than I can think of in my lifetime, I understand how usually your co-ops are not-for-profit so any dividends go back to the membership and that sort of thing. You pay, on your facilities, you say you're from Lincoln and I suppose you have an office and all that.

KEN BRADSHAW: Yes.

SENATOR LOUDEN: You pay the same rate of property taxes as the good people next door and that sort of thing...

KEN BRADSHAW: Yes.

SENATOR LOUDEN: ...on your property?

KEN BRADSHAW: Yeah.

SENATOR LOUDEN: You don't get any discount because you're not-for-profit? The only difference is theoretically the money, the profit you make is supposed to go back to the customers or to the membership.

KEN BRADSHAW: That's correct, yeah. We get no tax break at all. Matter of fact, this last year we paid over \$58,000 in property taxes, but we pay at the same rate and the assessor uses all the same formulas and everything for our property. There's no difference.

SENATOR LOUDEN: Now do you pay dividends too, or do you pay a capital gains credit, or do you have credits, or what do you do with your profit because...?

KEN BRADSHAW: We pay the dividends or if you want to use a banking term, interest on deposits classified as dividends but it's the same thing as paying interest on a CD or whatever, same type of thing. That's what you're asking.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 27

LB 496

We don't pay dividends like to shareholders.

SENATOR LOUDEN: Not like a co-op or electric co-op that...

KEN BRADSHAW: No, no.

SENATOR LOUDEN: ...that you get capital credits and that sort of...?

KEN BRADSHAW: We pay basically we just pay interest or dividends on the actual deposit amounts.

SENATOR LOUDEN: Do you pay all of them back every year or do you keep back a certain amount for capital?

KEN BRADSHAW: We only retain what's necessary for reserves because the credit union can't...the only way we can build capital in order to meet the requirements of the regulators is by retaining a certain portion of the earnings. We can't go out and gain capital by getting shareholders to increase the capital. We can only do it through earnings.

SENATOR LOUDEN: Through your earnings.

KEN BRADSHAW: Yeah, and that's required...and there are requirements and expectations of the regulators that you retain a, you know, reasonable amount of reserves.

SENATOR LOUDEN: Well, that was my next question. Is that regulated, how much of that you can retain every year or is that up to the membership?

KEN BRADSHAW: It's somewhat...well, it's somewhat regulated by the regulators and then the final decision is based on what the board determines is, you know, reasonable business practices for your particular operations. Some credit unions or evening businesses will retain a, you know, a slightly different amount but the regulators have very definite expectations of what you should be putting back.

SENATOR LOUDEN: One last question. You have a board of directors and are they voted by the membership each year or how are their terms...?

KEN BRADSHAW: Yes. Well, they have three-year terms and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 28

LB 496

there's...in my case I have nine board members and they serve...there's three each year that are elected or appointed by the members.

SENATOR LOUDEN: How large of a board do you have?

KEN BRADSHAW: Just nine.

SENATOR LOUDEN: Nine?

KEN BRADSHAW: Um-hum.

SENATOR LOUDEN: And you're the executive director or whatever. You serve then at their discretion?

KEN BRADSHAW: That's correct.

SENATOR LOUDEN: Okay, thank you.

SENATOR MINES: Thank you, Senator Louden. Any other questions for Mr. Bradshaw? Senator Flood.

SENATOR FLOOD: Thank you very much for your testimony, Mr. Bradshaw. I was interested, have you seen the proposed amendment to this bill?

KEN BRADSHAW: No, I have not.

SENATOR FLOOD: It says that page 2, line 14, it basically says that, as I read it and correct me if I'm wrong, that this public funds would be available in every county except those counties that contain a city of the primary or metropolitan class. And my reading of that would mean that you would not...you're in Lincoln, right, based in Lincoln?

KEN BRADSHAW: That's correct.

SENATOR FLOOD: And that it would exclude your bank.

KEN BRADSHAW: That would be correct.

SENATOR FLOOD: Are you still supportive of this?

KEN BRADSHAW: I support the bill. I don't see any reason why the amendment...there is much, much larger...like I

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 29

LB 496

stated in my last portion of my (inaudible) you got Wells Fargo and you got a lot...most of the banks in this town are much, much larger than we are, sometimes hundreds of times larger. I don't understand why that would be a valid, but I would still support the bill because I know there's other areas that need it even more so. I just don't understand the justification for that particular amendment. That would just be my personal opinion so.

SENATOR FLOOD: Thank you.

SENATOR MINES: Any other questions for Mr. Bradshaw? Seeing none, thank you for your testimony.

KEN BRADSHAW: Okay, thank you.

SENATOR MINES: And third of four proponents. Hello.

MARGARET SHELDON: Hello. Senator Mines and committee, I appreciate the opportunity to address this matter. My name is Margaret Sheldon and sometimes Peggy Sheldon to many of you. I have served as...

SENATOR MINES: How do you spell your last name, Peggy?

MARGARET SHELDON: S-h-e-l-d-o-n.

SENATOR MINES: Thank you.

MARGARET SHELDON: I have served as the administrator clerk treasurer for the village of Hemingford for the past 18 years and I've had a lot of experience in prudently investing public funds. And I found it quite challenging the last few years. We've had a lot of changes in ownership of the one bank that we have in town and I heard in some earlier testimony, stability and I thought about the local credit union. And I realized that what they have is they have stability. They've been there since I can remember and like I said, the bank keeps changing hands all the time. The owner previous to the owner that we have now, they set up a whole new type of accounts and they failed to set up in the accounts that public funds could be invested in which I found quite interesting because I had money that I felt if I was doing my job should be drawing interest. And I found myself spending two or three times a year an entire day down

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 30

LB 496

at the bank trying to find what I could put those funds in and sometimes it was nothing. I mean, you could have \$50,000 to \$100,000 laying around drawing no interest and I really didn't feel like I was doing my job very well at that point. In fact, currently, at the Village of Hemingford all of our investments are in 30-day CDs. And when you have about 15, 16 of those to be tracking, all the time, it makes the job much more complicated. I'm sure I'm not doing as good as I should do at it. The other day received a lottery check and was told with the new change in the bank, I can only put lottery checks in one day a month. So those, you know, it's a \$10,000 check and it's going to be laying there for up to 30 days with no interest. I think the credit union would be a viable alternative. Obviously, you know, there's \$100,000 limit but I certainly could do something a little better with \$100,000 than I'm doing it now. We are blessed with a bank and a credit union. I know some of my peers that have my job don't have both of those available to them and it truly would be a real hassle to be having to drive to take those deposits somewhere else. So I just think it's a prudent decision that we allow public funds to go into credit unions that maybe have some better alternatives for investing the taxpayers' dollars.

SENATOR MINES: Great, Peggy. Thank you.

MARGARET SHELDON: I'd sure answer any questions.

SENATOR MINES: Are there any questions? I'm sorry, Senator Louden.

SENATOR LOUDEN: Go ahead.

SENATOR MINES: No, go ahead.

SENATOR LOUDEN: Okay. Well, thanks for driving 400 and some miles out here, Peggy, and to testify on this bill. And I assure you that by testifying before the banking, insurance and commerce committee that these folks here are a lot more compassionate than they were over there in General Affairs yesterday to (laughter) the legislation you testified on. By using your local credit union there you have your various funds and it's mostly for just your town operation, right?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 31

LB 496

MARGARET SHELDON: Right.

SENATOR LOUDEN: And I agree our banks out there, and Hemingford and Alliance both, are not local anymore by...one of them could be called that by a stretch of the imagination but most of them, some of them are even owned now by countries in Europe is my understanding. So I agree that our local control probably isn't there anymore and like I say, I assure you we're a lot more compassionate over here than them other fellows are so thank you for your testimony.

MARGARET SHELDON: Okay. I'm glad (laugh).

SENATOR MINES: Thank you. Any other questions for Ms. Sheldon? Thank you very much. You did a real nice job. Thanks. Fourth testifier in support of LB 496. Good afternoon.

CURTIS KAYTON: Good afternoon, Chairman Mines, members of the committee. My name is Curtis Kayton spelled C-u-r-t-i-s K-a-y-t-o-n. I'm an employee of Southwest Public Power District headquartered in Palisade. I'm also an original organizer and board member of the Pioneer Community Federal Credit Union located in Palisade. I'm here today to testify in support of LB 496 on behalf of Southwest Public Power District and the Nebraska Rural Electric Association. This association represents 35 rural electric utilities serving rural Nebraska. And to be honest, most of my testimony has already been adequately hit on, I feel, so I won't attempt to repeat it. In the aspect of, we are faced with incurred expense transporting our own deposits from our place of business to our primary financial institutions. We've had two branch banks come and go in Palisade and we have a credit union there now that's two blocks up the street, and we feel that as stewards of public funds to own and operate an electric system in southwest Nebraska we should have all the tools available to us to maximize the returns for our ratepayer dollars that we hold. So with that said, I'll conclude my testimony and attempt to answer any questions.

SENATOR MINES: Great. Questions by the committee? Senator Louden.

SENATOR LOUDEN: I guess I never realized, but public power districts are public entities and they were not allowed to

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 32

LB 496

use credits also.

CURTIS KAYTON: That's correct.

SENATOR LOUDEN: That's what you're telling me?

CURTIS KAYTON: Yes, sir.

SENATOR LOUDEN: Thank you.

SENATOR MINES: Curtis, are you a board member of the local credit union?

CURTIS KAYTON: Of the local credit union, yes.

SENATOR MINES: All right. So you have kind of a dual interest here (laughter).

CURTIS KAYTON: Yes.

SENATOR MINES: You'd like to see public funds deposited in the credit union that you're a board member.

CURTIS KAYTON: Well, we, you know, from the power district's standpoint it's our policy. We try to support local business as much as we can.

SENATOR MINES: Sure.

CURTIS KAYTON: We serve the business so we feel we ought to be able to support the business and, frankly, we would have no interest in pulling our checking account out of our primary banking institution. But, you know, we just like to be able to put a CD in this credit union if we were enabled to so.

SENATOR MINES: Great. Thanks for your testimony. Appreciate you coming in. Any other proponents? Anyone wishing to speak in favor of LB 496? Seeing none, those in opposition please come forward. Mr. Hallstrom, welcome.

BOB HALLSTROM: (Exhibit 17) Thank you, Senator. Chairman Mines, members of the Banking, Commerce and Insurance Committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 33

LB 496

Association in opposition to LB 496. LB 496 would authorize state and federally chartered credit unions to accept deposits of public funds by the state and local political subdivisions up to the amount, currently \$100,000 insured by the NCUA. The credit union industry has attempted to piggyback onto existing law authorizing mutual savings and loans to accept the deposit of state and local political subdivision funds. While credit unions may desire similar treatment to that accorded mutual savings and loans when it comes to eligibility to accept public deposits, similar treatment is not warranted. There is a significant distinction to be drawn between mutual savings and loans and credit unions. Savings and loans pay federal and state income taxes and credit unions do not. In addition, in order for a credit union to be eligible for the deposits of the state or a local political subdivision, it must amend its charter and its by-laws in order to restrict the rights of the state or political subdivision as an account holder. These restrictions provide that the state and any political subdivision must waive its voting rights in the credit union, must waive its right to share in the profits of the credit union, and must waive its right to share in any distribution of assets in the event of dissolution of the credit union as a condition to placing deposits with a credit union. We find it strange that credit unions would abandon their core principles in seeking to access public funds. The notions of membership governance and membership profit-sharing are at the very heart of the credit unions' claims of entitlement to the multi-billion-dollar exemption from federal and state income taxes which they currently enjoy. Allowing credit unions to receive deposits from nonmembers moves them yet another step away from their roots. We would submit that if the credit union industry is not willing to contribute to the public coffers by paying its full share of taxes they should not be allowed to feed from the public trough by being able to hold public deposits. In addition, it is widely recognized that banks serve their entire community and are subject to extensive CRA, Community Reinvestment Act, laws and regulations. By contrast, credit unions are generally viewed as serving a defined membership and are not subject to CRA regulations. Public funds serve a very important function of providing additional liquidity required by community banks to fund the loan demand in their community, helping families achieve their desires of home ownership and helping to finance

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 34

LB 496

agricultural operations and small businesses which leads to additional investments and job creation in our state. Allowing tax-exempt advantaged credit unions to be eligible to compete for public funds will be detrimental to local communities, as credit unions would have an unfair competitive advantage in bidding for public funds and would continue to grow at the expense of the taxpayer. Some may view limiting credit unions access to public funds to the amount insured by the NCUA as a compromise of sorts. However, it actually serves to exacerbate the competitive advantages granted to the tax-exempt credit unions. While the first \$100,000 of any public deposit would be protected by deposit insurance, any public funds in excess of \$100,000 have a significant carrying cost as they must be protected through the pledging of securities or the purchase of a deposit bond, both of which add to the costs incurred by banks and savings and loans maintaining public deposits in excess of \$100,000. LB 496 would effectively allow credit unions to only have to compete for the least costly portion of public deposits. Supporters of the bill have claimed that a bank's ability to claim Subchapter S status provides the same tax benefits as credit unions enjoy from their tax exempt status. Nothing could be further from the truth. A critical distinction between Subchapter S banks and credit unions is that a bank's shareholders are required to pay taxes on Subchapter S earnings whether or not the earnings are distributed in the form of dividends or capital gains. By contrast, pursuant to the full tax exemption from federal and state income taxes, credit unions, by retaining their earnings rather than distributing them to the members, can avoid taxation completely and use the retained earnings to grow their institution or to grow new brick and mortar. It was interesting to note one of the witnesses suggested that they don't pay dividends, they pay their members interest or dividends on their shares or their deposits and that's their way of paying taxes through the distributions. Obviously, banks do the same thing by paying interest on their deposits to their customers. Their customers pay taxes on that income and we also pay dividends at the shareholder level, whether or not we're a Sub S corporation or not. So I think that is a significant distinction. In addition, Subchapter S banks have an additional potential tax burden in that the built in gain, income from the disposition of certain assets and excess passive investment income remain subject to double taxation, once at the corporate level and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 35

LB 496

again as a tax on individual shareholders at the time of distribution. While some banks have chosen Subchapter S status, obviously, it is not for everyone because it is not the full-fledged tax exemption which the credit unions enjoy. In closing, I think the deposits represent the wrong material on which the banks operate and contribute back to their community, and for the reasons that I have stated we remain opposed to the bill. I heard the amendment discussed with regard to any county in which there is not a primary or metropolitan city located, and we would be opposed to that amendment as well. Be happy to address any questions.

SENATOR MINES: Thank you, Mr. Hallstrom. Questions?
Senator Langemeier.

SENATOR LANGEMEIER: Mr. Hallstrom, I have one question. We got a chart here that it talks about the taxing issue and on here the Subchapter S make up 79 banks in Nebraska and it says 30 percent of the banks which I read in another here is actually 29. But how are the other 70 percent of banks owned?

BOB HALLSTROM: Well, the banks cannot operate as an LLC because of limitations on their ability to obtain FDIC insurance coverage. So most banks will be, maybe, owned under a holding company umbrella but effectively, the state and federal income taxes are going to be the traditional C Corporation taxation which will involve taxation at the corporate level and then upon distributions of dividends to shareholders there would be a second layer of individual taxation on those dividends that are distributed.

SENATOR LANGEMEIER: Thank you.

SENATOR MINES: Any other questions? Senator Louden.

SENATOR LOUDEN: Yes, thanks for your testimony, Bob. You mentioned in your testimony here that there's a difference between mutual savings and loans, and credit unions. Now correct me if I'm wrong. Is mutual savings and loans can more or less be privately owned or owned by just a few people and your credit unions are more of a co-op?

BOB HALLSTROM: Well, the mutuality aspect, Senator, I may not be an expert on this, but I think the mutuality aspect

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 36

LB 496

stems or flows from the fact that they have members of the organization. They do not have shareholders as a stock-owned enterprise would have and so to my knowledge the savings and loans, and the credit unions from the membership aspect would be the same. The issue that I've pointed out in my testimony is that for many, many years the mutually owned savings and loans were not subject to taxation. As the years went back and Congress, I think, developed an understanding that mutual-based savings and loans were becoming more bank like in terms of the activities that they conduct, the powers that they enjoy, they chose to terminate that tax exempt status. Credit unions we would argue and submit ought to be going the same way. The morphing of the credit unions in terms of the large credit unions, the expenses that they are getting...we've got three credit unions in Lancaster County, for example, who have recently received authority to have their common bond cover the entire county of Lancaster County so we think they're getting much more bank like in terms of the activities and the powers that they enjoy, and that one of those powers that we "enjoy," at the banking side of things is paying federal and state income taxes and that perhaps they ought to do the same.

SENATOR LOUDEN: I guess what brought this to mind...what was Commonwealth? It was a savings and loan?

BOB HALLSTROM: That was an industrial.

SENATOR LOUDEN: Savings and loan or?

BOB HALLSTROM: It was an industrial. It's a different type of entity, Senator. I, again, don't know all of the nuances...

SENATOR LOUDEN: It was a bank then?

BOB HALLSTROM: No, it was an industrial. They're different than a savings and loan, or a bank.

SENATOR LOUDEN: There's another creature out there then?

BOB HALLSTROM: No longer. Within the last two or three years we've eliminated the ability of anyone to, at least for the moment, ever form an industrial in the future.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 37

LB 496

SENATOR LOUDEN: Okay. Thank you.

SENATOR MINES: Senator Flood.

SENATOR FLOOD: Mr. Hallstrom, thank you for your testimony. I am reviewing a chart prepared by Senator Redfield and at the bottom of the chart it indicates that both credit unions and Subchapter S banks each pay sales tax equal to financial deposits at a certain rate that's articulated here. In your testimony on page 1 of your provided copy, you state that savings and loans pay federal and state income taxes and credit unions do not. Are we missing something on this chart?

BOB HALLSTROM: Senator, the distinction is that what is referred to, I assume, I have not seen the chart, but I'm going to speculate what's referred to as the bank...

SENATOR FLOOD: Would you like me to provide you a copy of the chart?

BOB HALLSTROM: That's fine. I'll speculate or I'll look at it. What that is referring to is the financial deposits or commonly referred to as the bank deposit tax. In the mid-eighties the Nebraska bank deposit tax or franchise tax, at that time, was ruled unconstitutional. We came up with a different way of financial institutions paying the bank deposit tax and credit unions, state chartered credit unions only agreed at that time to be subject to the bank deposit tax. So, yes, they do pay the bank deposit tax. The federally chartered credit unions pay neither state or federal income tax and they do not pay the bank deposit tax either. Federally chartered credit unions also, Senator, are exempt from sales taxes. We oftentimes tell the story about actually happened in Washington, D.C....

SENATOR FLOOD: Well, before we go down that road,...

BOB HALLSTROM: Okay.

SENATOR FLOOD: ...there's 81 credit unions in Nebraska. How many are federally chartered and then how many are not federally chartered?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 38

LB 496

BOB HALLSTROM: I don't have the exact figure, Senator. I would believe that the larger percentage, both in numbers or at least in assets, are federally chartered.

SENATOR FLOOD: So there are some that are not federally chartered.

BOB HALLSTROM: That's correct.

SENATOR FLOOD: And they...do they operate under a state charter?

BOB HALLSTROM: Excuse me?

SENATOR FLOOD: Do they operate under a state credit union charter?

BOB HALLSTROM: Yes, yes, state credit union charter.

SENATOR FLOOD: And they would be paying the...and just to reclarify what you were saying before. The state tax on financial deposits. Federally chartered credit unions do not pay that while state chartered credit unions do?

BOB HALLSTROM: That is correct, Senator.

SENATOR FLOOD: Okay. And...so that you would make a correction under credit unions in the third box down to indicate a distinction between federally chartered and state chartered credit unions whereas federally chartered credit unions do not pay the federal deposit tax.

BOB HALLSTROM: The bank deposit tax, yes.

SENATOR FLOOD: Right.

BOB HALLSTROM: Yes.

SENATOR FLOOD: What about state income tax? That was, in your testimony on page 1 of your written copy, tell me about the state income tax implications for credit unions and break it down by state and federal charter.

BOB HALLSTROM: Well, the federally chartered credit unions pay neither federal or state income taxes. Federally

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 39

LB 496

chartered credit unions do not pay sales taxes. State chartered credit unions, by contrast, to my understanding pay the bank deposit tax. I believe they are required to pay sales tax and both federally and state chartered credit unions to my understanding pay property taxes.

SENATOR FLOOD: Would a state chartered credit union pay state income tax?

BOB HALLSTROM: Senator, I'm not sure. I know that at the holding company level for banks that there is federal and state income tax. I don't know if there's a similar counterpart on the credit union side that would be subject to state income tax.

SENATOR FLOOD: Is it likely, in your opinion, that a state chartered credit union would pay income tax?

BOB HALLSTROM: Again, without knowing whether they have that counterpart I probably can't speak to that issue.

SENATOR FLOOD: Thank you for your testimony.

BOB HALLSTROM: Thank you, Senator.

SENATOR MINES: Thank you, Senator Flood. Any other questions? Mr. Hallstrom, I had not heard this argument before. Again, it's on your page 1 where you say that credit unions must amend their charter and bylaws in order to restrict the rights of state or public subdivisions as an account holder. So you're saying any public entity that participates would not be allowed to be a voting member of the institution?

BOB HALLSTROM: Senator, what has happened, we have and I think one of the witnesses for the supporters had referenced the fact that there is a constitutional provision that prevents the state from having an ownership interest in a private corporation. For years that was the cornerstone of the arguments that went back and forth in trying to determine whether or not savings and loans, mutually based savings and loans who were interested in public deposits for many years, were or were not going to be authorized to have that. And at the end of the day, generally the constitutional argument that to allow the state to deposit

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 40

LB 496

funds as a "member" in that mutually owned savings and loan would run afoul of the Constitution. Probably about four or five years ago, legislation was introduced that allowed statutorily a political subdivision and the state, in back to back years of legislation, to effectively, as is reflected, I think, in the bill itself to waive those ownership or membership interests in order to ensure that the political subdivision or the state would not be running afoul of those constitutional provisions. I think in retrospect that now has spurred the interest of credit unions to suggest that they are similar types of animals and should have the opportunity now to come in and do the same thing. In this case, again, we've made the arguments as to why we don't think those are apples to apples comparisons with regard to the benefits that credit unions have and, as a result, we oppose the bill.

SENATE MINES: All right, thanks. Any other questions? Bob, thanks so much for being here.

BOB HALLSTROM: Thank you, Senator.

SENATOR MINES: Mr. Yost is next and before you testify, I do need to recognize, we have a group visiting us today, the Financial Women International group, and I'd like to welcome you to our committee and thanks for coming to the capitol today. Mr. Yost.

KURT YOST: Chairman Mines, members of the Banking, Commerce and Insurance Committee, my name is Kurt Yost, K-u-r-t Y-o-s-t. I am here today on behalf of the Nebraska Independent Community Bankers. I cannot add much from what Mr. Hallstrom has discussed relative to the credit union situation. Senator Redfield and I talked briefly and I asked the senator how many times we have discussed this issue and she thought it was about year six on this very (laughter) question. And she was quick to point out and I certainly applaud her for that, that she is a capitalist and she truly is. However, it would come as no shock that the independent community bankers, too, would oppose LB 496. And, very briefly, it's been discussed and Senator Flood asked some good tax questions but if you stop and think about it, there isn't anyone in this room that doesn't pay federal income taxes. I would be willing to guess there is no one in this room that does not pay federal income taxes

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 41

LB 496

except credit unions. Thank you.

SENATOR MINES: Thank you. Any questions for Mr. Yost?

SENATOR PAHLS: Mr. Yost...

SENATOR MINES: Senator Pahls.

SENATOR PAHLS: By looking at some of the past testimony I would share this with you that the 79 Nebraska banks that estimated a difference of 14.5 million, those who are under Subchapter S as compared to 78 credit unions, there's a difference of almost \$10 million federal taxes.

KURT YOST: \$10 million.

SENATOR PAHLS: Well, once is a 14.5 savings of federal taxes in 79 Nebraska banks and 78 credit unions estimated 4.7 million. Now I don't know about all these figures but I'm just saying it does seem like there is some difference if these figures are accurate. I'll be willing to show it to you...

KURT YOST: Well, as Mr. Hallstrom...and I don't know what you're looking at, Senator Pahls but as Mr. Hallstrom pointed out, even Subchapter S and of the 254 bank charters in the state of Nebraska, I think Senator Flood was alluding to this. There are 254, approximately, according to the FDIC, approximately 254 bank charters in the state of Nebraska. And the testimony provided by one of the gentlemen was that 79 of the banks are Subchapter S and as Mr. Hallstrom pointed out, Senator, all that income just flows down to the stockholders. They're still paying federal income tax.

SENATOR PAHLS: Right. There was just...

KURT YOST: They're paying it on a personal basis as opposed to a corporate basis.

SENATOR MINES: Any other questions?

KURT YOST: Not...and I would add and I don't know the numbers but I do know for a fact that one of the hesitations for businesses and, in particular, banks, there is some

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 42

LB 496

reluctance, at times, to roll to the Subchapter S because the conversion from a C to an S has an upfront tax penalty that's fairly substantial. And I don't know what that is and I don't know how it's calculated, but I do know that has been a limitation in the thinking of some people who consider an S option.

SENATOR MINES: Senator Flood.

SENATOR FLOOD: Mr. Yost, thank you for your testimony today. Is it true that a Subchapter S corporation is taxed similarly to the way that a limited liability company would be taxed from the standpoint that the profits and/or losses flow through to the individual member or shareholder?

KURT YOST: That is correct.

SENATOR FLOOD: And that income that is taxed in a Sub S Corporation is present whether or not a distribution is made by the corporation. To clarify, if the corporation shows \$100,000 profit for the year and that money was possibly reinvested into the corporation and no dividends were made by the company, the individual shareholders would report income on a pro rata basis as to how many shares they had.

KURT YOST: Not being an accountant, Senator, I would assume that to be correct. On the LLC, no bank...and it was discussed earlier in testimony and Mr. Hallstrom alluded to it also, keep in mind while we pass that legislation there are no banks with LLC because they haven't got the ability to get FDIC insurance.

SENATOR FLOOD: I was using the LLC as just kind of a model...

KURT YOST: Oh, okay.

SENATOR FLOOD: ...to compare. That's an interesting distinction when you think about a Sub S and how the profits are reported by the shareholders. Thank you.

SENATOR MINES: Thanks, Kurt. Any other questions? Appreciate the testimony.

KURT YOST: Thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 43

LB 496

SENATOR MINES: Could I see a show of hands, anyone following Mr. Ruth that wishes to testify in opposition? Seeing none, Larry, you're bringing up the rear.

LARRY RUTH: (Exhibit 18) Thank you very much, Senator. My name is Larry Ruth, R-u-t-h, and I'm here representing the Heartland Community Bankers Association. This is an association of a number of savings and loan institutions in the state of Nebraska. The association itself is a regional association but I'm, of course, only appearing on behalf of those members here in Nebraska. I have some testimony here that I'd like to hand out. It is two paragraphs in length but I'm still not going to read it to you. It's from Jim Turner who's the executive director of the association. He elaborates on...he focuses on the federal taxation issue without any great elaboration. Mr. Hallstrom has expanded on this to great detail with better than my ability to add or detract, so I'm not going to get into that except to say that we were involved several years ago in the change in the law that allowed for savings and loans to have this ability to take public funds but we would be treated just as banks do as far as federal taxation goes and that's why we feel, have the same position as commercial banks in this particular case. Thank you.

SENATOR MINES: Great, thank you. Committee, any questions for Mr. Ruth? Seeing none, thanks for your testimony. One last time. Anyone in opposition wishing to testify? Anyone in a neutral capacity? Senator Redfield to close.

SENATOR REDFIELD: I was going to waive closing but I felt that I had to come back up here and say that I do not believe that banks are feeding at the public trough, that as a bank stockholder I bless banks and I'm pleased that they serve the citizens of Nebraska. I don't see this as an issue between banks and other financial institutions and credit unions. I don't see this as an issue of one is better than another or one is worse than another, one gets a better deal than another. I believe that we should treat all of our citizens and institutions the same and we have federally chartered banks. We have state chartered banks. We have federally chartered credit unions. We have state chartered credit unions. And you will find the same type of treatments flow through those different entities. As I have

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
February 15, 2005
Page 44

LB 496

studied the tax code I see the financial deposit tax as figured here. That's the best assessment that I have been able to make as I have studied the issue. But again it comes back to whether government should be efficient and whether we should guarantee safety for the public funds and I believe that credit unions are one of the ways that we can do that and I would tell you that there are currently 26 states that agree with that. There are another 13 states that leave it up to the regulator. There are another 11 states that don't specifically exclude it. In fact, there are only four states in the United States that specifically do not allow it, so I would say that other entities have or other states have decided to allow their public entities this choice. And, again, they may not choose it. I think it should be up to local boards; they're after all answerable to the public. Thank you.

SENATOR MINES: Thank you, Senator. Questions for Senator Redfield? Seeing none, I will close the public hearing on LB 496 and that concludes the business of the committee for...